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## **The Development of the Veto Power of the Governor of Illinois.**

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The veto power, like so many others of our political institutions, is an adaptation of a British institution transplanted to American soil. In England it was a royal prerogative. The king enacted laws upon the petition of his people. In the course of the development of Parliament he was forced to agree not to alter petitions, which had come to be presented in the precise form in which it was desired to have them enacted. But his assent was still necessary to give them validity. He could refuse his assent as late as 1707—when the last veto of a parliamentary act occurred.

Though the veto power at home declined, it was found convenient to maintain it for colonial purposes. Legislation in British colonies is still subject to disallowance by the king. That he always acts "in council" is simply a convenient method to insure that he does not act contrary to the will of the party in power. While vetoes of colonial legislation are sparingly made in the British Empire today, that can hardly be said of the practice of a hundred and fifty years ago. Here the veto power was practically undiminished. That the power was wielded not in vain is abundantly testified by the fact that the first of the long list of grievances against the king of Great Britain enumerated by the Declaration of Independence is on account of the use of the veto power. "He has refused his assent to laws, the most wholesome and necessary for the public good," so runs the indictment.

In the American colonies before the revolution no uniformity with regard to the veto power existed. In Rhode Island and Connecticut, where the governors were elected by the people, no veto power existed. In the proprietary colonies the veto power was exercised by the proprietor or his deputy.

In Pennsylvania, besides, the king retained the right to veto colonial legislation. In the royal colonies the governor was given an absolute veto. Not only that, but his power of assent was limited. Finally, all measures assented to by the royal governor were subject to disallowance afterwards by the king.

During the struggle with Great Britain the governor had been the ally of the king. The popular assembly, on the other hand, had truly represented the people. The result was that our early American state builders had confidence in legislative assemblies, with a corresponding distrust of the executive. This is clearly reflected in the absence of the executive veto power in most of our early state constitutions. Of the thirteen original states, only two provided for a veto power, namely, New York and Massachusetts.

The veto provisions adopted by these two states differed widely. The one in New York, adopted in 1777, vested the veto power in the council of revision, composed of the governor and the members of the supreme court. A bill passed by the legislature had to be presented to the council for revisal and consideration. If they approved it, they were to sign it. If not, they were to return it, with their objections in writing, to the house in which it had originated. Here it might be passed over the disapproval of the council by the vote of two-thirds of the total membership. It was then to be sent to the other house, where two-thirds of those present might pass it over the veto.

The council was given ten days for the consideration of bills. Failure to disapprove a bill within that time resulted in its becoming law without approval. If the legislature, by adjournment within the ten-day period, should prevent the return of a bill, return was to be made on the first day of the next meeting of the legislature, or the bill would become law.

The chief importance of the New York plan is that it was practically unique. It is of special interest only to us, for Illinois was the only other state in the Union to adopt it.

Another provision, the one adopted by Massachusetts in 1780, was destined to have much wider influence. Most of its essential features were adopted by the National Constitutional Convention of 1787, and thereafter by most states of the Union. It provided that a bill or resolve passed by the general court should be submitted to the governor for

approval or disapproval; that if he should approve it, he should sign it; but that if he did not, he should return it with the reasons in writing to the house in which it had originated; that his message should be entered on the journal; and that upon reconsideration two-thirds of the members of each house might pass the bill over his veto. The time given the governor for the consideration of bills was five days. If any bill should not be returned by the expiration of that period, it was to become law without his assent. No provision was made for the contingency of adjournment before the expiration of the five days. Bills could, therefore, not be vetoed after adjournment. To remedy this defect an amendment was adopted in 1820, providing that bills vetoed, the return of which had been prevented by the adjournment of the general court, should not become law.

The situation in regard to the veto power at the time of the admission of Illinois in 1818 may be briefly summarized as follows: Ten states, or exactly one-half, still denied their governors the power to disapprove bills. The other ten granted that power in varying degrees. New York, as we have seen, provided for a council of revision. Nine states had granted the veto power to the governor. The time allowed for the consideration of bills varied from five to ten days. The vote required to over-ride the veto varied from a majority to two-thirds of each house of the legislature. In all cases except New York, as noted above, the majorities required were based on the total membership of the houses, respectively.

The Illinois constitutional convention of 1818, therefore, had two general precedents to follow. Two different plans were formally advanced and considered by it. One, which was eventually adopted, was the New York council of revision plan. The other was a strong veto power lodged in the hands of the governor. It was similar to the provisions in force in Louisiana and Pennsylvania. Both of these states required a two-thirds vote to override the governor's veto. Both gave him ten days for the consideration of bills. And both required that bills vetoed after the adjournment of the legislature should be returned within the first three days of the following session. The plan proposed in the Illinois convention differed only in that it required bills vetoed after

adjournment to be returned on the first day of the following session of the general assembly.

It was noted above that not a single state had followed the New York plan of a council of revision, but that, on the other hand, since then nine states and the United States had vested the veto power in their chief executives. That Illinois, nevertheless, adopted the New York plan must be ascribed mainly to the influence of Elias Kent Kane, who was a member of the convention. Mr. Kane was born in New York, educated at Yale, and had studied law in New York. He had removed to Illinois in 1814. In the convention of 1818 he was a member of the committee of fifteen entrusted with the work of drafting the new constitution. He appears to have been one of the most prominent and influential members.

The committee of fifteen reported as section 15 of Article III, dealing with the executive department, almost word for word that section of the New York constitution of 1777 establishing the council of revision. A few days later, while the plan of the committee of fifteen was being considered, an alternative plan, already referred to, was offered. It gave the veto power to the governor. It allowed him ten days for the consideration of bills. It required a two-thirds vote of each house to override the veto. It provided that if the legislature by adjournment should prevent the return of bills within the ten days allowed, such bills were to be returned on the first day of the following session or become laws.

This plan is not heard of any more, however. Three days later, on August 17, Article III being considered, section by section, the council of revision plan as originally proposed by the committee of fifteen was adopted. The vote required to override the veto, however, was placed at a majority of each house, and not at two-thirds, as in New York. This section, without any further change, was adopted on the final reading.

The veto power in its final form was found in section 19 of Article III of the constitution. It provided that:

"The governor, for the time being, and the judges of the supreme court, or a major part of them, together with the governor, shall be and are hereby, constituted a council to revise all bills about to be passed into laws by the general assembly; and for that purpose shall assemble themselves from time to time when the general assembly shall be con-

vened, for which, nevertheless, they shall not receive any salary or consideration under any pretense whatever; and all bills which have passed the senate and house of representatives shall, before they become laws, be presented to the said council for their revisal and consideration; and if, upon such revisal and consideration, it shall appear improper to the said council, or a majority of them, that the bill should become a law of this state, they shall return the same, together with their objections thereto in writing, to the senate or house of representatives (in whichever the same shall have originated), who shall enter the objections set down by the council at large in their minutes, and proceed to reconsider the said bill. But if, after such reconsideration, the said senate or house of representatives shall, notwithstanding the said objections, agree to pass the same by a majority of the whole number of members elected, it shall, together with the said objections, be sent to the other branch of the general assembly, where it shall also be reconsidered, and if approved by a majority of all the members elected, it shall become a law. If any bill shall not be returned within ten days after it shall have been presented, the same shall be a law, unless the general assembly shall by their adjournment render a return of the said bill in ten days impracticable; in which case the said bill shall be returned on the first day of the meeting of the general assembly, after the expiration of the said ten days, or be a law."

The council of revision lasted for thirty years—1818 to 1848. Though its record was very creditable indeed, it was not destined to continue a part of our constitutional system. The purely judicial work of the members of the supreme court demanded all of their time. This was especially true after 1841, when they were required to hold circuit courts as well. A change had become imperative.

In the constitutional convention of 1848 there was never any doubt that the council of revision would be discontinued. There seems to have been no sentiment at all for its retention. On the other hand, several resolutions proposing alterations in the constitution contained provisions for its abolition. The attitude is clearly reflected in a statement made by Mr. Alfred Kitchell, a member of the convention. He objected to the presentation of too many questions at once. He urged that

they should be presented one at a time. "For example," he said, "let it be the abolition of the council of revision. There is probably not a member not prepared to discuss and vote on that proposition."

However, there was considerable diversity of opinion regarding the merits of a veto power lodged in the hands of the governor. On the other hand, there were the customary speeches against the power of one man to thwart the will of the people. It was said to be a vestige of royalty and un-republican. On the other side, it was urged that the tyranny of one is less dangerous than the tyranny of many; that the governor is more nearly the representative of all the people than is the legislature; that he could be held to more definite responsibility; and that, as a matter of fact, it had proved satisfactory wherever tried.

Perhaps only a small percentage of the convention would have favored the abolition of the veto power altogether. On the question of granting a strong or weak veto power to the governor, the members were very nearly evenly divided. On the whole, the Democrats seem to have favored the former, while the Whigs seem to have favored the latter.

The committee of ten appointed to draft the article on the executive was headed by Samuel D. Lockwood, who had been a member of the supreme court and the council of revision since 1825. On June 18 they reported to the convention. Section 20 of the article reported proposed to vest the veto power in the hands of the governor. It required a two-thirds vote of those present to override the veto.

In the convention itself section 20 had a rather checkered experience. It was considered in committee of the whole on the 16th and 17th of July. On the 16th an amendment offered by Mr. R. J. Cross, providing that a majority of the total membership of each house of the legislature should be sufficient to override the veto, was rejected. On the following day an amendment offered by Mr. William A. Minshall was accepted. It required a three-fifths vote of the total membership to override the veto. But on August 11th, at the final consideration of the report of the committee of the whole by the convention, it was again amended. This amendment, offered by Mr. J. M. Davis, lowered the vote required for re-passage from three-fifths, as in the Minshall amendment, to a

majority of the total membership, as proposed by the Cross amendment.

The veto section, as finally adopted by the convention, is found in section 21 of Article IV of the constitution of 1848. It provides:

“Every bill which shall have passed the senate and house of representatives shall, before it becomes law, be presented to the governor; if he approve, he shall sign it; but if not, he shall return it, with his objections, to the house in which it shall have originated; and the said house shall enter the objections at large on their journal, and proceed to reconsider it. If, after such reconsideration, a majority of the members elected shall agree to pass the bill, it shall be sent, together with the objections, to the other house, by which it shall likewise be reconsidered; and if approved by a majority of the members elected, it shall become a law, notwithstanding the objections of the governor. But in all such cases the votes of both houses shall be determined by yeas and nays, to be entered on the journals of each house, respectively. If any bill shall not be returned by the governor within ten days (Sundays excepted) after it shall have been presented to him, the same shall be a law, in like manner as if he had signed it, unless the general assembly shall, by their adjournment, prevent its return, in which case the said bill shall be returned on the first day of the meeting of the general assembly, after the expiration of said ten days, or be a law.”

An examination of the provision just quoted shows that it provided merely a suspensive veto. Elsewhere the constitution provided that no bill should become a law without the concurrence of a majority elected to each house of the general assembly. Should the governor object to the passage of any bill, the same majority would be able to pass it over his veto. The most that he could do would be to force a reconsideration.

Nevertheless, the governor's hands had been strengthened. The veto power had not been changed essentially from what it was under the council of revision. But it had all been placed in his hands. He was not obliged to share it with the members of the supreme court, who might outvote him in the council.

However, the suspensive veto proved inadequate. This is especially true of the period after the civil war. The demand

for private legislation—especially for charters of incorporation—became too strong for the general assembly to resist. The governors, especially Oglesby and Palmer, had striven valiantly to stem the tide. But these efforts had been largely in vain. Most of the important bills disapproved had been repassed. The tyranny of the many had proved intolerable. The people in 1870 were ready to strengthen the governor's hand very considerably.

The constitutional convention of 1862 had proposed a strengthening of the veto power. The veto provision of the proposed constitution, found in section 14 of Article V, required a two-thirds vote of the whole membership of each house of the general assembly to override the governor's disapproval. It would have allowed the governor ten days for the consideration of bills, both after adjournment as well as during the session.

Unfortunately this constitution was not ratified by the people. Though the state had been Republican at the election of 1860, nevertheless, a majority of the members of the constitutional convention were Democrats. The Republican press found it comparatively easy to discredit their work. The convention itself played into the hands of its enemies by foolish pretensions to sovereign powers.

The constitutional convention of 1869-1870 was overwhelmingly in favor of strengthening the veto power. The orgies of special legislation indulged in by recent legislatures were fresh in the minds of the members. So were also Governor Palmer's heroic efforts of 1869 to stem the tide. But it was equally well realized that he had been largely helpless against the will of the general assembly.

Before the convention had appointed its committees, a resolution urging that the veto power be strengthened was offered. Very early in its proceedings the convention requested a reprint of Governor Palmer's veto messages of 1869, together with a report of the action of the general assembly on the vetoes. Many speeches and resolutions referred to the evils of special legislation and expressed the belief that a strong veto power would have checked it. To quote one member, Mr. James C. Allen of Crawford county, in supporting the strong veto power proposed by the committee on the executive, he said that an effective veto would have saved the state

from "the curse of much of the vicious legislation that has prevailed for the last few years."

The committee of nine, to whom the task of drafting the article on the executive department was entrusted, reported on January 26, 1870. They unanimously reported a veto section providing that a two-thirds vote in each house should be required to override the governor's disapproval, and that the governor should have ten days for the consideration of bills, both during the session and after adjournment.

On February 19 the article on the executive department was taken up for consideration. Mr. Elliott Anthony of Chicago, the chairman of the committee of nine, referring to section 20 of the proposed article, said: "Had our present governor been clothed with this veto power, what untold miseries would he have saved us from." Replying to critics of the so-called one man power, he contended that the argument did not turn on that point, but upon the facts proved by experience; that the legislature was not infallible; that love of power might cause it to encroach upon the other departments; that factional strife might prevent deliberation, and that it might be led astray by haste or by the impressions of the moment. He believed that it was necessary to give the executive the veto power to enable him to defend himself and to increase the chances of the community against the enactment of bad laws, either through haste, inadvertence or design. As for the argument that the veto power might be invoked to prevent the passage of good laws, he held that there was less danger of that contingency.

Efforts were made to reduce the majority required to override the veto, on February 22 and April 20. Both would have reduced it to a majority of the total membership, as under the constitution of 1848. The attitude of the convention is shown by the vote on two amendments offered on April 20. The first was an attempt to have inserted the provision of the constitution of 1848, that bills vetoed after adjournment should be submitted to the next meeting of the general assembly for reconsideration. It was rejected by the vote of 47-11. The second was a proposal that the general assembly, if it should fail to pass a bill over the veto, might by majority vote submit it to the people for adoption or rejection. This amendment was rejected by the vote of 53-12.

The veto provision as adopted by the convention is found in section 16 of Article V of the constitution. It provides that:

“Every bill passed by the general assembly shall, before it becomes a law, be presented to the governor. If he approve, he shall sign it, and thereupon it shall become a law; but if he do not approve, he shall return it, with his objections, to the house in which it shall have originated, which house shall enter the objections at large upon its journal, and proceed to reconsider the bill. If, then, two-thirds of the members elected agree to pass the same, it shall be sent, together with the objections, to the other house, by which it shall likewise be reconsidered, and if approved by two-thirds of the members elected to that house, it shall become a law, notwithstanding the objections of the governor. But in all such cases the vote of each house shall be determined by yeas and nays, to be entered on the journal. Any bill which shall not be returned by the governor within ten days (Sundays excepted) after it shall have been presented to him, shall become a law in like manner as if he had signed it, unless the general assembly shall, by their adjournment, prevent its return, in which case it shall be filed, with his objections, in the office of the Secretary of State, within ten days after such adjournment, or become a law.”

The constitutional convention of 1870 did not complete the task of perfecting the veto power. The power to veto items in appropriation bills was still lacking. It was not added in Illinois before 1884. Agitation had started early in the eighties. A resolution offered by Senator Kelly of Adams county during the session of 1881 is of interest as pointing toward an early adoption of the power to veto items in appropriation bills. The resolution proposed read:

“Whereas, Appropriation bills have often been delayed to nearly the end of the session before they are put upon their passage, and reductions that have been carefully considered and adopted are frequently reinstated by committees of conference of the two houses without much deliberation, at the closing hours of the session; therefore,

*Resolved*, That all appropriation bills be considered and disposed of at least three days before the day fixed for adjournment.”

Though the resolution failed, it is of interest to note that it received twenty votes, as against twenty-three opposed.

Governor Cullom, in his regular message to the general assembly of 1883, recommended that an amendment to the constitution giving the governor the power to veto items in appropriation bills, be submitted to the people. He called attention to the fact that many state governors possessed this power; that the mayors of Illinois had been given this power in 1875; and that President Arthur had just recommended its adoption for the United States. Early in the session Senator William B. Archer of Pike county introduced a resolution for an amendment to the constitution, requiring appropriation bills to be itemized, and giving the governor the power to veto distinct items or sections. Senator Archer had been a member of the constitutional conventions of 1847 and 1869, in both of which he had urged the adoption of a strong veto power. The resolution without change was adopted in both houses of the general assembly by overwhelming majorities—in the senate by the vote of 35-7, and in the house of representatives by 107-2. It was submitted to the people for ratification at the general election November 4, 1884, where it was approved by the vote of 427,821-60,244, out of a total vote of 673,096 cast at the election. The amendment adopted was inserted in the body of section 16 of Article V of the Constitution and reads as follows:

“Bills making appropriations of money out of the treasury shall specify the objects and purposes for which the same are made, and appropriate to them respectively their several amounts in distinct items and sections, and if the governor shall not approve any one or more of the items or sections contained in any bill, but shall approve the residue thereof, it shall become a law as to the residue in like manner as if he had signed it. The governor shall then return the bill, with his objections to the items or sections of the same not approved by him, to the house in which the bill shall have originated, which house shall enter the objections at large upon its journal, and proceed to reconsider so much of said bill as is not approved by the governor. The same proceedings shall be had in both houses in reconsidering the same as is hereinbefore provided in case of an entire bill returned by the governor with his objections; and if any item or section of said

bill not approved by the governor shall be passed by two-thirds of the members elected to each of the two houses of the general assembly, it shall become part of said law, notwithstanding the objections of the governor."

The present veto power of the governor of Illinois has proved very effective. It is practically impossible to pass a bill over his disapproval. But though this power is practically absolute, there has never occurred an instance of serious abuse. The governors of Illinois have on the whole exercised this power wisely and conscientiously. The people expect the governor to exercise independent judgment on bills presented to him for approval or rejection. They have confidence in him. He more nearly than any other officer in the state government represents all the people. Thus, we have the strange spectacle of the veto power, once a royal prerogative, having become an indispensable power in the hands of a democratic executive.